

מיגו will now discuss the issue of a למפרע; a retroactive מיגו. The power of a מיגו is to substantiate an effective claim. An acceptable מיגו is in a case when the litigant could have stated a better argument instead of stating the present argument; as in the case where the מחזיק initially claimed קמי ידי זבינתה כו' (which is an effective claim); however it needs to be substantiated that it is indeed true. The מיגו substantiates the claim. The מחזיק will be נאמן that it indeed was זבנה מינך or קמי ידי זבנה מינך, since he has a מיגו that he could have stated להש"ם. An example of מיגו למפרע is in our case where initially he claimed מפלניא זבינתה כו' (which is an ineffective claim). At this point he is not believed (even though he has the מיגו of להש"ם) since he has no טענה. Afterwards he makes a second claim that it was קמי ידי זבנה וכו'. If we could substantiate this claim, then obviously he would be believed. However, we cannot substantiate this claim of קמי ידי, since now he has no מיגו; he cannot claim להש"ם (or any other vindicating argument) since he already admitted (by saying דזבנה מינך) that it originally belonged to the מערער. It is just that previously, before his original claim of זבינתה כו' that is when he had a מיגו. This type of מיגו is called מיגו למפרע; there was a מיגו by his first claim, but not by his second claim. תוספות maintains that such a מיגו is not valid, as תוספות will shortly explain. We will not believe his second claim of קמי ידי, since presently he has no valid מיגו to support his claim (only a למפרע).

however, it is certainly true that now, once the מחזיק stated –

I bought it from 'him' who bought it from you – מפלניא זבינתה דזבנה מינך and by saying this, the מחזיק –

admitted that it originally belonged to the מערער, and since he did not originally claim either קמי ידי זבנה מינך or קמי ידי זבנה מינך, then the מחזיק –

cannot subsequently claim that the מוכר – **תו לא מצי למיטען**

bought it from you in my presence – **קמי ידי זבנה מינך**

or that the מוכר lived there one day in my presence. We cannot argue that even in such a case the מחזיק should be believed, since he had –

a מיגו that he could have stated originally – **[ב¹] מיגו דאי בעי אמר בתחלה**

it was never yours²; This is not a valid argument. The מחזיק is not believed with this מיגו –

for we do not allow a retroactive מיגו. A מיגו can substantiate a claim only if it could have been claimed at the moment of the actual claim. If it could only have been claimed in the past, but not presently; it is not an acceptable מיגו. Therefore, since we cannot substantiate his claim of קמי ידי, the מחזיק has no טענה and the property reverts back to the מערער.

מיגו will first prove that למפרע לא אמרינן and then explain why it is not a valid מיגו.

¹ See הגהות הב"ח.

² It would seem that the same will apply in a case where there was a חזקת ג' שנים and the מחזיק claimed קמי ידי (זבנה) but did not initially state קמי ידי זבינתה דזבנה מינך. The מחזיק cannot subsequently claim (זבנה) קמי ידי זבנה מינך and expect to be believed on the basis of the זבינתה כו' מיגו, since it too is a למפרע.

מיגו למפרע לא later (that as it is evident from the גמרא – כדמוכח לקמן (דף מא,ב) – (אמרין –

concerning an individual who lived in an attic in the city of קשתא for four years (and had עדים to that effect). A מערער claimed the property as his –

and the מחזיק claimed “I bought it from ‘him’ who bought it from you” (as in our גמרא) –

– ר"ח the case came before – אתא לקמיה דרבי חייא

– עדים bring מחזיק – אמר ליה אייתי סהדי

– that the מוכר lived there for even one day – דדר ביה אפילו חד יומא

and I will place this property in your possession’. This concludes the quote from the גמרא. תוספות continues with his proof –

that if the מחזיק ר"ח it seems from the response of – משמע דאי לית ליה סהדי has no עדים that the מוכר was יומא חד ביה חד יומא, then –

– he is not believed to state that the מוכר lived there one day in my presence – אינו נאמן לומר קמי ידי דר בה חד יומא

– since the מוכר has a מיגו that he could have claimed ‘I bought it directly from you (the מערער). The reason this (למפרע) is invalid, is –

– since the מוכר already admitted – כיון שכבר הודה

the מערער; that he did not purchase the property from – דלאו מיניה זבנה – מפלניא זבינתה מחזיק

– he no longer has the מיגו of זבינתה that he originally had; the מחזיק already admitted that it was not זבינתה but מפלניא זבינתה. This establishes that when he claims now קמי ידי he presently has no מיגו.³

will now address the issue, why indeed is a למפרע מיגו not effective. Seemingly he is telling the truth, for if he is lying he could have lied originally! תוספות explains:

– and there is no basis to believe what he is presently claiming (קמי ידי דר בה חד יומא) on account of the –

that he could have originally lied and said I bought it from you – [מיגו]⁴ שהיה יכול לשקר בתחלה

– before he admitted that מפלניא זבינתה. The reason for this is –

– for it never entered his mind – דלא הוה מסיק אדעתיה

– that he needed this claim of קמי ידי. When the מחזיק claimed מפלניא זבינתה it is evident that he is saying the truth; since he has the מיגו of מיגו מערער. This truth however, is an insufficient טענה; it does not establish that the מערער ever

³ This proof is valid only according to תוספות who maintains that if the מחזיק originally claimed קמי ידי דר ביה חד יומא it is a valid claim. However according to the רשב"ם who maintains that the claim of קמי ידי דר ביה חד יומא is valid only if there are עדים to that effect, but the מחזיק is never believed even if he initially claimed קמי ידי דר ביה חד יומא, then there is no proof at all from that גמרא.

⁴ See הגהות הב"ח.

sold the property. The מחזיק needs now to make a claim that is an effective טענה; the claim of קמי דידי. There is no מיגו now, however to substantiate his new claim of קמי דידי. The fact that he was honest by the first claim, cannot prove that he is also honest in his second claim⁵. A מיגו merely substantiates the immediate claim; it cannot indicate to us that everything this person will ever say is true. The מחזיק told the truth that מפלניא זביתנה וכו' being under the impression that this claim is sufficient to win the case. When he now realizes that it is insufficient, it is possible that he resorts to lying.

In summation: A מיגו למפרע is not a valid מיגו. Therefore once the מחזיק claimed that קמי דידי דר ביה חד יומא or קמי דידי זבנה and did not originally claim מפלניא זביתנה דזבנה מינך, and then if he subsequently claims קמי דידי he is not believed for this is a למפרע מיגו. The only way the מחזיק can retain the field once he admitted מינך דזבנה is (if עדים testify that the מערער sold it to the מוכר or) if he brings עדים that the מוכר was יומא דר ביה חד יומא. In that case since we substantiate that the מוכר was יומא דר ביה חד יומא, then the rule of טוענין ללוקח applies, and בי"ד will argue that (perhaps) the מוכר bought it from the מערער⁶. תוספות proves that a מיגו למפרע is invalid from the story of בעיליתא that רב חייא would only accept עדים that יומא דר ביה חד יומא, but would not accept a טענה of יומא דר ביה חד יומא after the מחזיק already admitted that מינך דזבנה. A מיגו לפרע is invalid, because the fact that he was previously honest in his original claim cannot prove that he is equally honest in his subsequent claim.

Why is there a difference between a regular מיגו and a למפרע מיגו? Seemingly, even by every מיגו, we can argue that once the person presented his claim he lost the מיגו!

⁵ מיגו states that he was not originally aware that he needed the claim of קמי דידי; that makes it a מיגו למפרע. If he were originally aware that he needed the claim of קמי דידי to win the case; then we can argue that it (the מיגו of להש"ם) is not a למפרע מיגו, since he is presently merely interpreting his original statement of מפלניא זביתנה to include also that יומא דר ביה חד יומא. For if he was originally aware of the necessity of claiming קמי דידי, then why did he not initially say it?! Obviously, we are forced to say that this is what he meant when he originally said מפלניא זביתנה; that the מוכר was יומא דר ביה חד יומא. We cannot say that he did not say it originally because it is not true (even though he knew it was necessary in order to win the case), for if so, then why is he saying it now! What changed?! Therefore since he originally meant that יומא דר ביה חד יומא was then it should be a valid מיגו. However, if we maintain as תוספות states, that originally the מחזיק was not aware that to win the case he must claim קמי דידי; he thought that מפלניא זביתנה alone is sufficient; therefore it is a למפרע מיגו.

⁶ If the מוכר would have claimed that מינך זביתנה then he would be believed if either the מחזיק was there for three years, or if the מערער had no עדים that he was the קמא מרא (with a הש"מ). See however the ר"י at the conclusion of our תוספות.